Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-062

JUNE TERM, 2002

State of Vermont v. Timothy C. Eriksen	}	APPEALED FROM: District Court of Vermont, Unit No. 2, Addison Circuit DOCKET NOS. 51-8-01 Ancs & 501-8-01 Ancr Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Defendant appeals the civil suspension of his driver's license and his conviction of driving while intoxicated (DWI), fourth offense, which was based on his conditional plea of guilty. He argues that the court erred in denying his motion to suppress, in which he claimed that the arresting officer did not have an objectively reasonable, articulable basis for stopping his vehicle. We affirm.

On the evening of August 3, 2001, a Town of Bristol police officer stopped defendant after observing his vehicle weaving within its lane on a two-lane highway. Defendant was eventually processed for DWI. After speaking to an attorney, he agreed to take a breath test, which revealed a blood-alcohol content of .159 percent. Defendant was charged with DWI, fourth offense. At his final suspension hearing, the district court considered his motion to suppress. The officer testified that he activated the police cruiser's videotape system after observing defendant's vehicle weaving dramatically within its lane. According to the officer, the vehicle was "playing ping-pong" between the center line and the fog line, at times approaching the center line just as oncoming traffic approached. At one point, the vehicle came in contact with the fog line, and the officer activated his blue lights, believing that the operator was either impaired or in need of medical attention. Upon watching the videotape, the court denied defendant's motion to suppress, concluding that the officer was justified in stopping the vehicle after observing it weave within the full width of its lane at least three times during a twenty-second period.

On appeal, defendant argues that there was an insufficient basis for the officer to stop him. He contends that this Court has upheld stops based on intra-lane weaving only when other indications of impairment were present. See State v. Schmitt, 150 Vt. 503, 504, 507 (1988) (upholding stop based on officer observing vehicle traveling slowly, weaving within its lane, and crossing center line as it rounded turn). He cites out-of-state cases from Ohio and New York in which the courts refused to uphold stops based on minor intra-lane weaving. See People v. Culcross, 706 N.Y.S.2d 605, 606 (County Ct. 2000) (swerving twice within lane did not constitute reasonable basis for stop); State v. Johnson, 663 N.E.2d 675, 678 (Ohio Ct. App. 1995) (touching fog line on two separate occasions did not constitute reasonable basis for stop); State v. Drogi, 645 N.E.2d 153, 155 (Ohio Ct. App. 1994) (minor weaving when no other traffic nearby did not constitute reasonable basis for stop); State v. Gullett, 604 N.E.2d 176, 180-81 (Ohio Ct. App. 1992) (crossing fog line on two occasions when no other traffic present did not constitute reasonable basis for stop).

We do not find defendant's argument persuasive. None of the cases he cites suggests that pronounced and persistent

intra-lane weaving in the face of oncoming traffic, such as that which occurred here, cannot form the basis for a traffic stop. See Johnson, 663 N.E.2d at 677-78 ("under certain circumstances, an incident or incidents of crossing the right edge line may give a police officer reasonable suspicion to stop a vehicle, depending upon the severity and extent of such conduct"); Drogi, 645 N.E.2d at 155 ("Many courts, including this one, have held, and should continue to hold, that weaving may be sufficient to justify an investigative stop."); Gullett, 604 N.E.2d at 181 (Abele, J., concurring) ("In some cases, weaving within a single lane of travel may justify an investigative stop."). Indeed, courts have routinely held that intra-lane weaving may form the basis for an investigative stop, depending on the particular circumstances of the case. See State v. Tompkins, 507 N.W.2d 736, 739-40 (Iowa Ct. App. 1993) (citing other jurisdictions holding that intra-lane weaving, standing alone, may be sufficient basis for investigative stop, and holding that officer was justified in making stop after observing defendant's vehicle weave within its lane four or five times); State v. Malaney, 871 S.W.2d 634, 637 (Mo. Ct. App. 1994) (citing other jurisdictions holding that intra-lane weaving may form basis for investigative stop, and holding that officer was justified in stopping vehicle after observing it weave within its lane three times within one mile); Neal v. Commonwealth, 498 S.E.2d 422, 424-25 (Va. Ct. App. 1998) (citing other jurisdictions holding that weaving within lane, standing alone, may be sufficient to justify investigative stop, and concluding that officer was justified in stopping vehicle after observing it weave within its lane five to ten times during twenty-five-second period).

Ultimately, the issue is whether, given all of the circumstances, the officer had an objectively reasonable, articulable reason for believing that defendant was either in need pf assistance or engaged in any wrongdoing at the time of the stop. See State v. Sutphin, 159 Vt. 9, 11 (1992) (level of suspicion is considerably less than proof of wrongdoing by preponderance of evidence, but more than unparticularized suspicion or hunch). Defendant need not have violated any traffic laws for the officer to have a reasonable suspicion that he was driving while intoxicated. Semich v. State, 506 S.E.2d 216, 218 (Ga. Ct. App. 1998) ("the behavior giving rise to the reasonable suspicion need not be a violation of the law"). As the officer testified, he was trained that weaving, even intra-lane weaving, may indicate impairment. Upon review of the record, we find no error in the district court determining that the arresting officer had a reasonable basis for making the stop after observing defendant's vehicle repeatedly weave within its lane, at least once in the face of oncoming traffic. As we observed in Schmitt, 150 Vt. at 507, "[t]he effort to keep the state's roads free of drunk drivers would be hampered indeed if police could not stop a car in circumstances of such telltale conduct as occurred in this case." That observation applies under the circumstances of this case as well.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice